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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/995,820	11/29/2001	Jean-Francois Saint Etienne	034299-370	9739

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EXAMINER

PHILPOTT, JUSTIN M

ART UNIT PAPER NUMBER

2616

DATE MAILED: 10/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/995,820	SAINT ETIENNE, JEAN-FRANCOIS	
	<b>Examiner</b>	<b>Art Unit</b>	
	Justin M. Philpott	2616	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 July 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed July 24, 2006 have been fully considered but they are not persuasive.
2. First, applicant asserts that the rejection of claims 1-4 under 35 U.S.C. §112 is overcome by the amendment. However, despite removing the word "multiple", the claims still recite a plurality of physical links by including the language "physical links" (plural). Thus, the claims remain rejected for the same reasons discussed in the previous office action. The rejection may be overcome by changing "physical links" to "a physical link".
3. Second, applicant repeats the argument (at pages 4-6) that applicant's claims 1 and 3 recite a statically-defined allocation table whereas Tanaka teaches an allocation table which may be further updated. That is, applicant does not claim the additional updating procedure that is taught by Tanaka. For the same reasons discussed in the previous office action, this argument is not persuasive because applicant is essentially arguing that applicant's claims should be distinguished from the invention of Tanaka because applicant's claimed invention has *removed* one of the limitations from Tanaka -- i.e., updating the allocation table some time after an inherently initial static allocation (e.g., see col. 5, lines 1-41). In this case, applicant cannot overcome the art of Tanaka by reciting a claimed invention which removes the updating procedure of the invention of Tanaka since Tanaka still teaches all of applicant's claimed limitations, including an inherently initial static allocation table prior to the updating procedure (e.g., see col. 5, lines 1-41).

*Claim Rejections - 35 USC § 112*

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1-4 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Specifically, claims 1 and 3 recite the claimed invention comprises three devices linked to at least one switch by means of “physical links”. However, applicant’s specification describes an invention with only a *single* physical link, and multiple links are only disclosed with respect to multiple virtual links (see “Detailed Description of Invention”). Accordingly, the phrase “physical links” in claims 1 and 3 lacks enablement. Applicant may overcome this rejection by changing “physical links” to “a physical link”.

Additionally, claims 2 and 4, dependent upon claims 1 and 3, respectively, are rejected for the same reasons discussed above regarding claims 1 and 3.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as

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the invention. Specifically, claims 1 and 3 each recite the limitation “the instantaneous network traffic” (claim 1, lines 6-7; and claim 3, lines 6-7) without previously introducing “instantaneous network traffic” in the claim, making it unclear as to what “instantaneous network traffic” reference is being made. There is insufficient antecedent basis for this limitation in the claim. Applicant may overcome this rejection by changing “the instantaneous network traffic” to “instantaneous network traffic”.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,657,958 to Tanaka.

Regarding claims 1 and 3, Tanaka teaches a device and process for controlling flows in a switched communication network comprising at least three devices (e.g., subscriber terminals 711, 713[a] and 713[b], see FIG. 7) linked to at least one switch (e.g., ATM switch 702, see col. 5, lines 14-19, col. 8, lines 45-50 and FIGS. 6 and 7) by means of multiple physical links (e.g., see FIG. 7 and col. 9, line 61 – col. 10, line 8, wherein subscriber terminals 713[a] and 713[b] inherently link to ATM switch 702 to transmission apparatus 712 by means of a physical link which differs from the physical link coupling subscriber terminal 711 to ATM switch 702), in which each of one or more virtual links (e.g., SVC, see col. 5, lines 20-41), which are each a

logical link using at least one physical link (e.g., link 211), enables information to be sent from a transmitter device (e.g., transmitter 202) to at least one receiver device (e.g., receiver 203), wherein each switch (e.g., ATM switch, see col. 5, lines 14-19 and FIGS. 6 and 7), which manages the virtual links and transmission rates dynamically in order to adapt optimally to instantaneous network traffic (e.g., see col. 7, lines 7-12, regarding the described bandwidth control system may be installed in the ATM switch; see also col. 5, line 3 – col. 7, line 6 regarding the bandwidth control system), contains an allocation table (e.g., bandwidth management table 206/609/635/643), defined statically (e.g., see col. 5, lines 1-41 regarding an inherently initial static allocation), which associates a bandwidth either with a virtual link (e.g., SVC, see col. 5, lines 20-41) or with a set of virtual links when several virtual links using at least one common physical link are never all active simultaneously, so as to guarantee a maximum transmission time of an item of information on each virtual link (e.g., bandwidth guarantee factor, see col. 5, lines 37-41), from a transmitter device (e.g., transmitter 202) to one or more receiver devices (e.g., receiver 203), and an allocation such that for every physical link the sum of the bandwidths allocated to virtual links using this physical link is less than the bandwidth of this physical link (e.g., see col. 6, lines 6-64, and specifically, col. 6, lines 11-20 regarding “unused transmission bandwidth”) to guarantee that there will never be any congestion of the communication switch (e.g., see col. 6, lines 57-64 regarding avoiding useless transmission by not providing an SVC if there is insufficient bandwidth available).

Additionally, while Tanaka may not specifically require the logical links to be either a single-direction link or a bi-direction link, Tanaka inherently provides the logical links operate *at least* in a single direction in order to be at least functional. Furthermore, in the alternative, if the

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logical links in Tanaka are considered to be bi-directional instead of single-direction links, Examiner takes official notice that it is well known in the art to implement logical links in a single-direction, and such an implementation would require less bandwidth and reduced system complexity when compared with bi-directional links. Thus, at the time of the invention it would have been obvious to one of ordinary skill in the art to implement the logical links of Tanaka in single-direction links in order to reduce bandwidth requirements and reduce system complexity resulting if bi-directional links were to be accommodated.

Regarding claims 2 and 4, Tanaka teaches the allocation table (e.g., bandwidth management table 206/609/635/643) is such that a bandwidth may be allocated to a set of flows (e.g., both upstream and downstream flows, see col. 10, lines 5-34).

### ***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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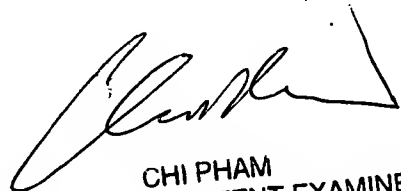
however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin M. Philpott whose telephone number is 571.272.3162. The examiner can normally be reached on M-F, 9:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chi Pham can be reached on 571.272.3179. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Justin M. Philpott

  
CHI PHAM  
SUPERVISORY PATENT EXAMINER

01/12/06